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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 MARK SMITH, JR.,

Case No. 3:24-cv-00063-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 STATE OF NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,10 Defendants.
11

12 Plaintiff Mark Smith, Jr. ("Smith") is proceeding on 42 U.S.C. § 1983 claims under
13 the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA") along with a
14 state law negligence claim. (ECF Nos. 3, 4.) Before the Court is the Report and
15 Recommendation ("R&R") of United States Magistrate Judge Carla L. Baldwin (ECF No.
16 15), recommending the Court grant in part and deny in part Defendants' motion to dismiss
17 Plaintiff's state law negligence claim (ECF No. 12 ("Motion")). To date, no objections to
18 the R&R have been filed. Because there is no objection, and as further explained below,
19 the Court will adopt the R&R and grant in part and deny in part Defendants' Motion.

20 Because there is no objection, the Court need not conduct de novo review and is
21 satisfied that Judge Baldwin did not clearly err. *See United States v. Reyna-Tapia*, 328
22 F.3d 1114, 1116 (9th Cir. 2003) ("De novo review of the magistrate judges' findings and
23 recommendations is required if, but *only* if, one or both parties file objections to the
24 findings and recommendations." (emphasis in original)). Judge Baldwin recommends the
25 Court grant Defendants' Motion in part because Plaintiff does not oppose it and because
26 the State of Nevada is barred from suit against Smith's negligence claim by the Eleventh
27 Amendment and the doctrine of sovereign immunity. (ECF No. 15 at 3-4.) However,
28 Judge Baldwin recommends dismissal of the claim without prejudice (despite Defendants'

1 argument the claim should be dismissed with prejudice) because dismissals of state law
2 claims for lack of jurisdiction should be without prejudice. (*Id.* at 4.) Having reviewed the
3 R&R, Judge Baldwin did not clearly err.

4 It is therefore ordered that Judge Baldwin's Report and Recommendation (ECF
5 No. 15) is accepted and adopted in full.

6 It is further ordered that Defendants' motion to dismiss (ECF No. 12) is granted in
7 part and denied in part.

8 It is further ordered that Plaintiff's state law negligence claim is dismissed without
9 prejudice.

10 DATED THIS 19th Day of May 2025.

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14 MIRANDA M. DU
15 UNITED STATES DISTRICT JUDGE
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